

Senate Bill No. 1780

CHAPTER 280

An act to add Section 17539.15 to the Business and Professions Code, relating to contest advertising.

[Approved by Governor August 10, 1998. Filed with
Secretary of State August 10, 1998.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1780, Peace. Contest advertising: sweepstakes.

Existing law regulates advertising in the state and prohibits certain unfair advertising practices relating to the operation or conduct of contests.

This bill would prohibit solicitation materials containing sweepstakes entry materials from representing, taking into account the context in which those representations are made, that a person is a winner or has already won a prize unless that person has, in fact, won a prize. It would also require those solicitation materials to include a prominent statement indicating that no purchase is necessary to enter the promotional sweepstakes and to include a copy of the official rules for the sweepstakes. This bill would also prohibit sweepstakes entries not accompanied by an order for products or services from being subjected to any disability or disadvantage in the winner selection process, as compared to entries accompanied by an order for products or services.

Existing law makes it a crime to violate any of the provisions regulating advertising. By adding new requirements and prohibitions with regard to sweepstakes advertising, this bill would expand the scope of an existing crime, thereby imposing a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 17539.15 is added to the Business and Professions Code, to read:

17539.15. (a) Solicitation materials containing sweepstakes entry materials shall not represent, taking into account the context in which the representation is made, including, without limitation,

emphasis, print, size, color, location, and presentation of the representation and any qualifying language, that a person is a winner or has already won a prize unless that person has in fact won a prize. If the representation is made on or visible through the mailing envelope containing the sweepstakes materials, the context in which the representation is to be considered, including any qualifying language, shall be limited to that which appears on, appears from, or is visible through the mailing envelope.

(b) Solicitation materials containing sweepstakes entry materials shall include a prominent statement of the no purchase necessary message, in readily understandable terms, in the official rules included in those solicitation materials, and, if the official rules do not appear thereon, on the entry-order device included in those solicitation materials. The no purchase necessary message included in the official rules shall be set out in a separate paragraph in the official rules and be printed in capital letters in contrasting typeface not smaller than the largest typeface used in the text of the official rules.

(c) Sweepstakes entries not accompanied by an order for products or services shall not to be subjected to any disability or disadvantage in the winner selection process to which an entry accompanied by an order for products or services would not be subject.

(d) Sweepstakes materials containing sweepstakes entry materials shall not represent that an entry in the promotional sweepstakes accompanied by an order for products or services, will be eligible to receive additional prizes or be more likely to win than an entry not accompanied by an order for products or services, or that an entry not accompanied by an order for products or services will have a reduced chance of winning a prize in the promotional sweepstakes.

(e) For purposes of this section:

(1) “No purchase necessary message” means a statement to the effect that no purchase is necessary as a condition of entering the promotional sweepstakes.

(2) “Official rules” means the formal printed statement, however designated, of the rules for the promotional sweepstakes appearing in the solicitation materials. The official rules shall be prominently identified and all references thereto in any solicitation materials shall consistently use the designation for the official rules that appears in those materials. Each sweepstakes solicitation shall contain a copy of the official rules.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government

Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

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